IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE SRI JUSTICE M.H.S. ANSARI**

**AND**
**THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO**

**WRIT PETITION Nos.594, 595, 622 and 1010 of 2005**

**WRIT PETITION No.594 of 2005**

Between:

M/s. Modern Crane Service,

No.5 Technocrats, IE., Balanagar,

Rep. by Partner, Hyderabad.

**..... PETITIONER**

AND

1.The Commercial Tax Officer, Ferozguda Circle, Hyderabad
2.The State of A.P. rep. by Secretary, Revenue Department, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the 1st respondent in passing the impugned assessment order in Rc. No. Nil/2001-2002 APGST dt.9-12-2004 treating the transactions as excisable to tax under Section 5E of the APGST Act without even examining the nature of the contracts as illegal, arbitrary and without authority of law and contrary to the provisions of the Act, against the principles of natural justice and the impugned levy is unconstitutional and declare that the turnover in

dispute does not involve any transfer of right to use goods and the turnover in dispute is not excisable to tax under section 5 E of the APGST Act.

**Counsel for the Petitioner: Mr.BHASKAR REDDY VEMIREDDY**

**Counsel for the Respondents : SPL. S.C. FOR COMMERCIAL**

**TAXES.**

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**WRIT PETITION No. 595 of 2005**

Between:

M/s.Modern Crane Service,

No.5 Technocrats I.E.,
Balanagar, Hyderabad 500 037.

**..... PETITIONER**

AND

1.The Commercial Tax Officer Ferozguda Circle,
2.The State of A.P.rep by its Secretary Revenue Department
Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the first respondent in passing the impugned assessment order in Rc.No.Nil/99-2000 APGST dt. 9-12-2004 treating the transactions as excisable to tax under Section 5 E of the APGST Act without even examining the nature of the contracts as illegal, arbitrary and without authority of law and contrary to the provisions of the Act, against the principles of natural justice and the impugned levy is unconstitutional and declare that the turnover in dispute is not excisable to tax under section 5E of the APGST Act pass such other order or orders.

**Counsel for the Petitioner: Mr.BHASKAR REDDY VEMIREDDY**

**Counsel for the Respondents: SPL. S.C. FOR COMMERCIAL**

**TAXES**

**WRIT PETITION No.622 of 2005**

Between:

M/s. Modern Crane Service,

No.5, Technocrats, I.E., Balanagar,
Hyderabad-500037, rep.by its Partner Mr.Amin.

**..... PETITIONER**

AND

1.The Commercial Tax officer, Ferozguda Cricle, Hyderabad.
2.The State of Andhra Pradesh,

rep. by its Secretary, Revenue Dept., Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the action of the 1st respondent in passing the impugned assessment order in Rc.No.Nil/2002-2003-APGST dt.9-12-2004 treating the transactions as excisable to tax under section 5 E of the APGST Act without even examining the nature of the contracts as illegal, arbitrary and without authority of law and contrary to the provisions of the Act, against the principles of natural justice and the impugned levy is unconstitutional and declare that the turnover in dispute does not involve any transfer of right to use goods and the turnover in dispute is not excisable to tax under Section 5 E of the APGST Act.

**Counsel for the Petitioner: Mr.BHASKAR REDDY VEMIREDDY**

**Counsel for the Respondents: SPL. S.C. FOR COMMERCIAL**

**TAXES**

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**WRIT PETITION No.1010 of 2005**

Between:

M/s. Modern Crane Service,

No.5, Technocrats, I.E.,
Balanagar, Hyderabad - 500 037,

Rep. by its Partner, Amin.

**..... PETITIONER**

AND

1.The Commercial Tax Officer, Ferozguda Circle, Hyderabad.
2.The State of Andhra Pradesh, rep. by its Secretary,
Revenue Department, Hyderabad.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the first respondent in passing the impugned assessment order in Rc.No. Nil/2000-2001-APGST dt.9-12-2004 treating the transactions as excisable to tax under Section 5 E of the APGST Act without even examining the nature of the contracts as illegal, arbitrary and without authority of law and contrary to the provisions of the Act, against the principles of natural justice and the impugned levy is unconstitutional and declare that the turnover in dispute does not involve any transfer of right to use goods and the turnover in dispute is not excisable to tax under section 5 E of the APGST Act.

**Counsel for the Petitioner: Mr.BHASKAR REDDY VEMIREDDY**

**Counsel for the Respondents: SPL. S.C. FOR COMMERCIAL**

**TAXES**

**The Court at the admission stage made the following :**

**ORAL ORDER:** (per Sri Justice M.H.S.Ansari)

When the matter was moved before the Court, it was adjourned to this date to enable the learned Special Standing Counsel for Commercial Taxes to obtain instructions of his client with regard to compliance of principles of natural justice in passing the impugned orders.

The impugned show cause notice dated 11-5-2004 is based on certain information furnished by the Regional Vigilance & Enforcement Officer. It reads as though the tax payable has been determined and, therefore, it is like a demand notice. However, at the foot of the show cause notice, there is an endorsement in pen requesting the petitioner to file written objections. The petitioner filed its written objections to the show cause notice and the impugned order is passed without affording an opportunity of hearing to the petitioner.

Learned Special Standing Counsel for Commercial Taxes submitted, upon instructions of his client, that fresh show cause notice shall be issued by the Commercial Tax Officer, respondent No.1.

Accordingly, without going into the merits of the contentions raised, the writ petitions

are disposed of setting aside the impugned show cause notice as also the final assessment order dated 9-12-2004 with liberty to respondent No.1 to make assessment in accordance with law after issuing fresh show cause notice and complying with principles of natural justice.

The writ petitions stand disposed of accordingly.

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(M.H.S.ANSARI, J.)

31st January 2005.

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(T.Ch.SURYA RAO, J.)

ARS

To

1.The Commercial Tax Officer, Ferozguda Circle, Hyderabad
2.The Secretary, Revenue Department, State of A.P., Hyderabad.

3. Two CCs to Spl. Standing Counsel for Commercial Taxes, High Court Bldgs., Hyderabad (OUT).

4. Two C.D.copies.